IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 871 OF 1990

The State of Maharashtra .. Appellant

versus

Raju Sakharam Chincholkar .. Respondents

...

Mr.D.P. Adsule, APP for the State.

None for the respondent.

CORAM : V.M. KANADE, J

DATED : 29th October 2004.

ORAL ORDER:-

1. The State of Maharashtra is challenging judgement and order passed by the Addl. Sessions Judge in Sessions Case no.187/90. By the said judgement and order dated 20th August 1990, the Addl. Sessions Judge acquitted the accused of the offence with which the accused were charged. The prosecution

case is that the accused was found to be in possession of 30 gms of charas. The charge-sheet was filed against the accused u/s.20(b) of the Narcotics Drugs & Psychotropic Substances Act, 1985.

2. The prosecution case is that on 9th December 1989 at about 11.00 a.m, ticket collector PW no.1 saw the accused in the ladies compartment in Karjat local train. The custody of the accused was handed to the Kalyan Railway police. A search was taken by PW no.3 PSI Palekar and two plastic bags containing 10 charas tablets weighing about 30 gms was found in his pocket. The prosecution examined three witnesses. PW no.1 Ratnakar was a ticket collector at Kalyan Railway station. PW no.2 was examined as a panch and PW no.3 is the Investigating Officer PSI Rajaram Palekar.

3. I have perused the evidence of these three witnesses. PW no.3 Rajaram Palekar has stated in his evidence that PW no.1 informed him that the accused was found in the ladies compartment and her movements were suspicious. PW no.3 called two panchas before taking search of the accused and during the search two plastic bags were found in the inner pocket of the pant of the accused. From this evidence, it can be

seen that before taking search, the accused was not informed of his rights u/s.50 of the NDPS Act. PW no.2 Vinod also has stated that before taking search of the accused, his rights to be searched in the present of the Gazetted Officer was not disclosed to him. PW no.1 Ratnakar Korde, Ticket Collector also has not stated in the evidence that the police had disclosed to the accused before taking his search that he had a right to be searched in the presence of the Gazetted Officer.

4. The learned counsel appearing on behalf of the State has submitted that the provisions of Section 50 of the NDPS Act would not be applicable in the present case because the said discovery was a chance discovery and the police had no reason to believe that accused was carrying drugs on his person.

5. Even assuming for a moment that the discovery of drugs was an chance discovery and that the provisions of section 50 therefore, are not attracted even otherwise, it has not come on evidence as to when the gard were weighed by the prosecution and none of the witnesses have disclosed that the panchas or the police Sub-Inspector had brought weighing scales

alongwith them. Further, from the evidence it is not disclosed that the contraband was kept in the Sr.Inspector of Police In charge of Kalyan Police station, it has not come in evidence that Shri Jadhav PSO, In-charge of Kalyan railway Police had affixed his seal to the said articles. The prosecution also has not examined PSO Jadhav. Thus, there is a clear non compliance of section 55 of the NDPS Act.

6. The trial Court in my view has therefore rightly given the benefit of doubt to the accused in view of the non compliance of the provisions of section 55 of the NDPS Act.

7. There is no merit in the submission made by the learned counsel appearing on behalf of the state.

8. Appeal is therefore, dismissed.

V.M. KANADE, J